



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 29504977

Date: JAN. 31, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, an artist, seeks classification as an individual of extraordinary ability in the arts. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not satisfy at least three of the initial evidentiary criteria or provide sufficient evidence that she is coming to the United States to continue to work in her area of expertise. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

**I. LAW**

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

## II. ANALYSIS

Because the Petitioner has not indicated or established her receipt of a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director determined the Petitioner did not fulfill any of them. On appeal, the Petitioner maintains she meets five evidentiary categories.<sup>1</sup>

*Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*  
8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner contends eligibility for this criterion based on her membership with the [REDACTED] [REDACTED]. USCIS determines if the association for which the person claims membership requires that members have outstanding achievements in the field as judged by recognized experts in that field.<sup>2</sup> The petitioner must show that membership in the association requires outstanding achievements in the field for which classification is sought, as judged by recognized national or international experts.<sup>3</sup>

The Petitioner submitted her membership card for the [REDACTED] and information about the association, including its “Rules to Join” and “Process to Join.” She also provided biographical profiles for two individuals who she claims serve on the [REDACTED] membership review panel. The “Rules to Join” state that an “applicant with more than 9 points (including 9 points) meets the performance conditions for applying for membership.” In addition, the “Rules to Join” indicate that points are granted based on

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<sup>1</sup> We consider the Petitioner’s prior eligibility claims not raised or contested on appeal to be abandoned. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

<sup>2</sup> *See generally* 6 *USCIS Policy Manual* F.2(B)(1), <https://www.uscis.gov/policy-manual>.

<sup>3</sup> *Id.*

numerous criteria, including having “participated in exhibitions,” “engaged in the restoration of fine arts . . . for more than 15 years,” and “worked continuously in . . . art research institutions for more than 15 years.” The “Rules to Join” further state that “[b]achelor of full-time national key art colleges and universities gets 1 point, full-time master gets 2 points and full-time doctor gets 3 points”; “[e]thnic minorities in remote areas get 2 points”; and “[f]emale artists in remote areas get 2 points.” The Petitioner has not established that the aforementioned membership criteria rise to the level of outstanding achievements.

Furthermore, the “Rules to Join” do not indicate that admission to membership in the [redacted] is judged by recognized national or international experts in their disciplines or fields. For example, the Petitioner has not shown that the “preliminary examination unit,” the “Membership Office,” the “Member Work Department,” or the “Party Group” of the [redacted] that reviews applicants is comprised of national or international experts in the arts. While the Petitioner provided the biographical profiles for F-M, Secretary-General of the [redacted] and Q-T-, First-level Inspector of the [redacted] this evidence does not establish that those serving as CAA membership reviewers are considered to be recognized national or international experts in their disciplines or fields.

For the reasons discussed above, the Petitioner has not established she meets this criterion.

*Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).*

The Petitioner claims eligibility for this criterion based on her authorship of a book, entitled [redacted]  
[redacted]  
and articles in [redacted]<sup>4</sup>

First, USCIS determines whether the person has authored scholarly articles in the field.<sup>5</sup> As defined in the academic arena, a scholarly article reports on original research, experimentation, or philosophical discourse.<sup>6</sup> It is written by a researcher or expert in the field who is often affiliated with a college, university, or research institution.<sup>7</sup> Scholarly articles are generally peer reviewed by other experts in the field of specialization.<sup>8</sup> In general, it should have footnotes, endnotes, or a bibliography, and may include graphs, charts, videos, or pictures as illustrations of the concepts expressed in the article.<sup>9</sup> Here, the record does not show that the Petitioner’s published work contains the characteristics of scholarly articles, as considered in the academic arena. The Petitioner did not establish that she wrote the articles as a researcher or expert rather than writing a general interest stories about [redacted] as an educator or the town of [redacted] and its artifacts. Moreover, none of her articles contain the features of academic scholarly articles, such as footnotes or bibliographies. For these reasons, the Petitioner did not show that her book and articles qualify as scholarly articles within the purview of academia.

<sup>4</sup> She submitted articles in [redacted] entitled [redacted]  
[redacted] (2013) and [redacted]  
[redacted] (2015).

<sup>5</sup> See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

For other fields, a scholarly article should be written for learned persons in that field.<sup>10</sup> “Learned” is defined as having “profound knowledge gained by study.”<sup>11</sup> Learned persons include all persons having profound knowledge of a field.<sup>12</sup> Here, the Petitioner did not show that her publications were written for learned persons in the visual arts field or for other learned persons in her particular genre. Further, the Petitioner did not establish that her publications are geared toward persons having profound knowledge in Chinese painting and rubbing.

Next, USCIS determines whether the publication qualifies as a professional publication, major trade publication, or other major media publication.<sup>13</sup> In evaluating whether a submitted publication is a professional publication or major media, relevant factors include the intended audience (for professional journals) and the circulation or readership relative to other media in the field (for major media).<sup>14</sup> Here, the Petitioner has not shown that the intended audience for [REDACTED]

[REDACTED] is indicative of a professional publication. Nor has she demonstrated that their circulation or readership rises to the level of major trade publications or other major media. Accordingly, the Petitioner has not established that her material qualifies as scholarly articles under this criterion.

*Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases.*  
8 C.F.R. § 204.5(h)(3)(vii).

The Petitioner submitted certificates stating that she presented her work at exhibitions such as China’s [REDACTED] Art Exhibition. As such, she has demonstrated that she fulfills this single criterion.

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

To qualify under this criterion, a petitioner must show that they played a leading or critical role for an organization or establishment, and that that organization or establishment has a distinguished reputation. For a leading role, USCIS looks at whether the evidence establishes that the person is (or was) a leader within the organization or establishment or a division or department thereof.<sup>15</sup> A title, with appropriate matching duties, can help to establish that a role is (or was), in fact, leading.<sup>16</sup> For a critical role, USCIS looks at whether the evidence establishes that the person has contributed in a way that is of significant importance to the outcome of the organization or establishment’s activities or those of a division or department of the organization or establishment.<sup>17</sup>

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<sup>10</sup> See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

<sup>11</sup> *Id.* (citing to the Oxford English Dictionary’s definition of “learned”).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

The Petitioner maintains on appeal that she has performed in a leading or critical role for [REDACTED] [REDACTED]. She initially provided an August 2018 “Letter of Appointment” naming her “a lifelong consultant” of [REDACTED]. In addition, the Petitioner submitted an August 2018 “Testimonial” (bearing a seal from [REDACTED]) that stated: “Because of her success in making full-form rubbings for the bronzes in the collection of [REDACTED], [the Petitioner] has promoted the exhibition and academic exchange of our collection, and has made significant contributions to the protection and research of cultural relics. Hereby we would like to appoint [the Petitioner] as a lifelong consultant of [REDACTED].” The author of this “Testimonial” is not identified and no address or telephone number were included in the document. The Petitioner also submitted various images of what she claims are “full-form rubbings for the bronzes collection,” but this documentation does not include evidence attributing the bronze collection rubbings to the Petitioner or her work at [REDACTED].

In response to the Director’s request for evidence (RFE), the Petitioner submitted a March 2023 letter from Z-D-, Curator of [REDACTED] stating:

I am very grateful to [the Petitioner] for serving as such a critical role of expert consultant for our museum. For a long time, [the Petitioner’s] outstanding achievements in the production of full-form rubbing are in close agreement with our museum’s key project – the collection, protection, and archaeological research of bronze ware. As an expert consultant for our museum, [the Petitioner] has played such a significant role in strengthening the protection of bronze relics, in-depth research on cultural relics resources, history and culture, promoting the activation and utilization of cultural relics, and promoting science popularization.

While the letter from Z-D- asserts that the Petitioner’s work involving “the production of full-form rubbing are in close agreement with our museum’s key project – the collection, protection, and archaeological research of bronze ware,” an article submitted by the Petitioner states that the [REDACTED] is “the only museum dedicated to the history and culture of the [REDACTED] [REDACTED] (emphasis added). The letter from Z-D- does not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Petitioner’s full-form rubbings for the bronzes in the collection of [REDACTED] is the “museum’s key project,” given that [REDACTED] is primarily a museum of [REDACTED]. The August 2018 “Testimonial” and the letter from Z-D- indicate that the Petitioner has contributed to [REDACTED] bronze rubbings collection, but their assertions are not sufficient to demonstrate that the Petitioner’s consulting role for the museum was leading or critical. For example, another article provided by the Petitioner states that [REDACTED] has “56 employees,” but the Petitioner did not provide an organizational chart or other similar evidence to establish where her role fit within the overall hierarchy of the museum to demonstrate a leading role. Nor does the evidence demonstrate that she has contributed to the museum in a way that was of significant importance to the outcome of its mission or operations.<sup>18</sup>

Next, USCIS determines whether the organization or establishment, or the department or division for which the person holds or held a leading or critical role, has a distinguished reputation.<sup>19</sup> Merriam-

<sup>18</sup> For instance, the Petitioner has not shown that her specific projects have significantly increased attendance at the museum.

<sup>19</sup> See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

Webster's online dictionary defines "distinguished" as "marked by eminence, distinction, or excellence" or "befitting an eminent person."<sup>20</sup> Here, the Petitioner initially submitted an article about [redacted] entitled [redacted] stating that it "officially opened on [redacted] 2010." In response to the Director's RFE, the Petitioner submitted another article indicating that [redacted] "is a national tier two comprehensive museum." She also provided an article stating that "there are 204 tier one museums, 455 tier two museums, and 565 tier three museums" according to the Chinese Museums Association (CMA). The Petitioner contends that this information shows that [redacted] "is among top 10%" in China," but her calculation is incorrect.<sup>21</sup> The Petitioner has not established that "tier two" CMA classification renders [redacted] an organization with a distinguished reputation.

Nor are the remaining articles offered in support of this criterion sufficient to demonstrate that [redacted] has earned a distinguished reputation. For example, a [redacted] 2006 article, entitled [redacted] [redacted] discusses only the museum's development phase and start of construction planned for the latter part of 2006. Likewise, an [redacted] 2010 article, entitled [redacted] [redacted] discusses the official opening of [redacted] and its artifacts and exhibition areas. These articles do not establish that the museum has achieved a distinguished reputation.

For the aforementioned reasons, the Petitioner has not established that she meets this criterion.

### III. CONCLUSION

The Petitioner meets the display criterion, but has not established she satisfies the criteria relating to membership, authorship of scholarly articles, and leading or critical role. Although the Petitioner also claims eligibility for the original contributions criterion under 8 C.F.R. § 204.5(h)(3)(v), we need not reach this additional ground because the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Because the Petitioner's inability to meet three of the initial criteria is dispositive of her appeal, we also need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20, or an analysis of the evidence relating to her continuing to work in her area of expertise in the United States under 8 C.F.R. § 204.5(h)(5). Accordingly, we reserve these issues.<sup>22</sup>

Nevertheless, we have reviewed the record in the aggregate, concluding it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the

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<sup>20</sup> *Id.*

<sup>21</sup> The 204 tier one museums comprise the top 16.6 percent of CMA-graded museums.

<sup>22</sup> See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

extraordinary ability designation is “extremely restrictive by design,”); *Hamal v. Dep’t of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at \*5 (D.D.C. June 8, 2021), *aff’d*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are “reserved for a very small percentage of prospective immigrants”). *See also Hamal v. Dep’t of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at \*1 (D.D.C. June 3, 2020) (citing *Kazarian*, 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that “[c]ourts have found that even highly accomplished individuals fail to win this designation”)); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that “arguably one of the most famous baseball players in Korean history” did not qualify for visa as a baseball coach). Here, the Petitioner has not shown the significance of her work is indicative of the required sustained national or international acclaim or it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate the Petitioner has garnered national or international acclaim in the field, and she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The record does not contain sufficient evidence establishing the Petitioner among the upper echelon in her field.

For the reasons discussed above, the Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.